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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,808	07/15/2003	Jon Godston	CS20558RL	7666

20280 7590 10/03/2006

MOTOROLA INC
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EXAMINER

NGUYEN, SIMON

ART UNIT	PAPER NUMBER
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2618

DATE MAILED: 10/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/619,808	Applicant(s) GODSTON ET AL.	
	Examiner SIMON D. NGUYEN	Art Unit 2618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-39 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-23 of U. S. Patent No. 6,856,792. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in the application comprises limitations that used in the patent but claimed broader than in the patent.

Independent claim 1 of the application is similar to independent claims 1 and 17 of the U.S Patent. Both claims disclose a mechanism for rotating first and second housing elements around a common axis, comprising: a wheel (a path extends around

the axis of rotation in the patent is obviously the same as of the wheel) coupled to the second housing and rotate around a center point; a tension device having a fixed end (a first end in the patent) and a free end (a second end), supplying a force for preloading (claim 17 of the patent); a linkage is considered as an engagement member in the patent between the tension device in the second end of the second housing for biasing the wheel toward rotation (or limiting the rotational movement which is in part disclosed in claim 17 of the patent).

Independent claims 15 and 22 of the application are similar to independent claim 17 of the patent, wherein both disclose a self-opening mechanism for rotating the first and second housings around an axis.

Dependent claims 2-14, 16-21, 23-39 of the application are similar to dependent claims 2-16, 18-23 of the patent, wherein they disclose in detailing about support elements to make the wheel to link with the tension device in order to rotate the first and second housing around the axis.

Response to Arguments

3. Applicant's arguments, see Remarks, filed 7/12/06, with respect to 35 U.S.C 112 second paragraph have been fully considered and are persuasive. The rejection of claims 1, 15, and 22 under second paragraph of 35 U.S.C 112 has been withdrawn.

Regarding the double patenting, the claims in the application as well the claims in the patent disclose a mechanism for rotating the first and second housing elements of a communication device around a common axis, for example, claim 1 of the application

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and claims 1, 17 of the patent, both disclose a tension device having a fixed end (first end) and a free end (second end), coupled to first and second housing elements, respectively, for limiting the rotational movement of the first housing element relative to the second housing element, both disclose how to rotate the first and second housing around the axis of the rotation, how to engage or release at a opening position or closed position. The differences are the claimed languages, the terms "a wheel" and "a linkage" are not used in the patent, instead of "a path that extends around the axis of rotation" and "engagement member". Wherein the path that extends around the axis of rotation is obviously described as a wheel and the linkage is obviously described as an engagement member which are known to those skilled in the art. Claims 15 and 22 of the application are similar to claim 17 of the patent, wherein both disclose a first housing element, a second housing element; a self-opening mechanism for coupling and rotating the first and second housing elements along a common axis, perpendicular to a front surface between closed and opening positions.

Furthermore, the co-pending application no. 10/331,525, which is a Patent Application Publication No. 2004/0204015, and it will be a patent (according to eDan), is tendency to be a double patenting to the application in which claim 1 discloses a ring path is obviously as a wheel in the application and other elements in claim 1 are similar to claim 1 of the application. Claims 15 and 22 of the application are similar to claim 16 of the co-pending no. 10/331,525.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Simon Nguyen whose telephone number is (571) 272-7894. The examiner can normally be reached on Monday-Friday from 7:00 AM to 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward F. Urban, can be reached on (571) 272-7899.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 306-0377.

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Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

600 Dulany, Alexandria, VA 22314

Or faxed to:

(571) 273-8300 (for formal communications intended for entry)

Hand-delivered response should be brought to Customer Service Window
located at the Randolph Building, 401 Dulany, Alexandria, VA, 22314.

Simon Nguyen

September 19, 2006

A handwritten signature in cursive script, appearing to read 'S. Nguyen'.

**SIMON NGUYEN
PRIMARY EXAMINER**